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**LABOUR & EMPLOYEES STATE INSURANCE DEPARTMENT**

**NOTIFICATION**

The 26th December 2014

No. 10533—IR (ID)-63/2012-LESI.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 22nd November 2014 in Industrial Dispute Case No. 07 of 2013 of the Presiding Officer, Industrial Tribunal, Bhubaneswar to whom the industrial dispute between the Management of Odisha Forest Development Corporation Ltd., Bhubaneswar and its workman Shri A. K. Parida represented through Odisha Forest Development Corporation Employees' Association, Bhubaneswar was referred to for adjudication is hereby published as in the Schedule below :

SCHEDULE

IN THE COURT OF THE PRESIDING OFFICER, INDUSTRIAL TRIBUNAL, BHUBANESWAR

INDUSTRIAL DISPUTE CASE NO. 07 OF 2013

Dated the 22nd November 2014

*Present :*

Shri B. C. Rath, O.S.J.S., (Sr. Branch),  
Presiding Officer,  
Industrial Tribunal,  
Bhubaneswar.

*Between :*

The Management of  
Odisha Forest Development Corporation  
Ltd., Bhubaneswar.

.. First Party—Management

*And*

Its workman Shri A. K. Parida,  
represented through Odisha Forest  
Development Corporation Employees'  
Association,  
Plot No. A/84, Kharavela Nagar,  
Bhubaneswar.

.. Second Party—Workman

*Appearances :*

Shri A. K. Swain, Auth. Representative	. . For the First Party—Management
Shri T. Lenka, Advocate	. . For the Second Party—Workman

**AWARD**

The Government of Odisha, in the Labour & E.S.I. Department, in exercise of powers conferred upon it by sub-section (5) of Section 12, read with Clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 (for short, the 'Act'), have referred the following dispute for adjudication by this Court vide their Letter No. 552—IR (ID)-63/2012-LESI, dated the 19th January 2013 :

"Whether the action of the management of M/s Forest Development Corporation Ltd., Bhubaneswar by not regularising the services of Shri Arun Ku. Parida, Daily Wage Worker from the date of regularisation of services of his juniors is legal and/or justified ? If not, what benefit Shri Parida is entitled to ?"

2. The case of the second party workman, in short, is that while continuing as a Daily Wager under the first party management since 1983, he suffered termination of his service with effect from the 30th June 1993 for which he raised an industrial dispute and on failure of conciliation thereof the dispute was referred to the Presiding Officer, Labour Court, Bhubaneswar for adjudication. In the said dispute ultimately an Award was passed by the Presiding Officer, Labour Court, Bhubaneswar holding his termination to be illegal and directing the first party management to reinstate him in service without any back wages. Against the said Award the first party management preferred a Writ bearing No. OJC No. 6776 of 1999 before the Hon'ble High Court of Orissa wherein the Hon'ble Court vide Order dated the 21st October 2010 confirmed the Award passed by the Presiding Officer, Labour Court, Bhubaneswar. Against such orders of the Hon'ble Court the first party management again filed a Writ Appeal and only after disposal of the said Writ Appeal No. 178 of 2010 in favour of the second party workman, he was reinstated but not regularised in service. According to the second party workman, since basing on the Gradation List, dated the 1st January 2013 his juniors were regularised in service, he claimed such benefit by making representation to the management and when the management did not pay any heed to such genuine grievance he raised the present dispute through his Union before the labour machinery and ultimately the present reference has been made to this Tribunal for adjudication of the dispute. The specific stand of the second party workman is that non-consideration of his claim for regularisation at par with his juniors is not only illegal but also unjustified and therefore, he is entitled to the relief of regularisation and other consequential benefits as claimed in the present proceeding.

3. The first party management entered contest in the case and filed its written statement refuting the assertions of the second party workman in the matter of his continuance under it from the year 1993. It is stated that the workman was initially engaged as a Daily Wager under the Bhubaneswar (C) Division during January, 1992 and due to dearth of work during 1993 he was terminated from service with effect from the 30th June 1993. Admitting about the dispute raised by the second party workman; the Award passed in the dispute and the orders of the Hon'ble Court, it is stated that the second party workman pursuant to the orders issued vide No. 402, dated the 8th October 2010 though joined service on the 16th October 2010 again left the work place and remained on leave for which a show cause was issued to him and ultimately considering his representation he was transferred to Bhubaneswar where he joined on the 12th January 2011.

As to the allegation of the second party workman that juniors to him have been regularised in service the first party management has stated in its written statement that no Daily Wage Worker joined after the 1st January 1990 has been regularised in service, rather the daily wage employees engaged after the 1st January 1986 have all been retrenched with effect from the 31st July 2001 on the basis of decision taken by the Board of Directors in their 188th meeting held on the 26th June 2001. Further assertion of the management is that in absence of vacancy and accumulated loss sustained by the organisation, the reference may be answered in favour of the first party management.

4. On the basis of the pleadings of the parties, the following issues have been framed :—

#### ISSUES

- (i) Whether the action of the management of M/s Forest Development Corporation Ltd., Bhubaneswar by not regularising the services of Shri Arun Ku. Parida, Daily Wage Worker from the date of regularisation of services of his juniors is legal and/or justified ?
- (ii) If not, what benefit Shri Parida is entitled to ?

5. In order to substantiate their respective stand both parties have led oral as well as documentary evidence. While the second party workman has examined himself as W.W. No. 1 and proved as many as eight documents marked Exts. 1 to 8, the first party management has examined on its behalf one Shri Pramod Kumar Rath, an L. D. Assistant as M.W. No. 1 and filed documents marked Exts. A to G.

#### FINDINGS

6. *Issue No. (i)*—The issue being vital and important bearing to the reference is taken up for consideration in preference to the other one. As per the pleading and evidence of the second party workman he was serving under the first party management as a Daily Wager, i.e., temporary workman from the year 1983 till he suffered termination on the 30th June 1993. On his termination of service an industrial dispute arose for which a reference was made to the Presiding Officer, Labour Court, Bhubaneswar for adjudication and the reference ended with an Award of reinstatement of the second party workman without any back wages and the said Award appears to have been implemented and the workman has been engaged with effect from the 16th October 2010 as a Daily Wager. Except the pleading of termination of the workman and his reinstatement by virtue of an Award passed by the Labour Court, Bhubaneswar and confirmed by the Hon'ble High Court of Orissa the first party management has refuted the workman's plea of engagement as a Daily Wager from the year 1983. Its specific stand is that the workman was initially engaged as a Daily Wager from January, 1992 and his service was terminated with effect from the 30th June 1993 on a Policy and Scheme framed by the management on the basis of the report of the Tata Consultancy Services due to derthness of work load in the organisation and financial stringency. There is no serious dispute to the fact that the workman has been reinstated. The regularisation of service of the second party workman has been sought mainly on a pleading and contention that the workman was serving under the management from the year 1983 and the Daily Wagers who joined in the first party management subsequent to his joining have been regularised in service. Had he been continued as a Daily Wager he would have been regularised and despite vacancies available in the organisation of the management his service has not been regularised.

7. Though oral evidence has been adduced claiming that the second party workman joined the services of the management in the year 1983, not a singly scrap of paper except the Award arising out of I. D. Case No. 53 of 1995 (Ext. 8) has been filed to establish that the second party

workman has been donning the job since the year 1983. On a careful reading of the Award, Ext. 8 it is seen that no finding has been specifically given by the Labour Court, Bhubaneswar that the workman was a Daily Wager under the first party management from the year 1983. On the other hand, observation has been made by the learned Labour Court that the workman appears to have been engaged as a Daily Wager from the year 1992. The other documents relied upon by the second party workman do not reveal anything by virtue of which an irresistible conclusion can be drawn that the workman was engaged from the year 1983. Those documents are related to the settlement made between the first party management and the representatives of the workmen of the said organisation representing the daily rated/consolidated rated employees (Ext. 1) and the O.F.D.C. Daily Rated/ Consolidated Workers Service Regularisation Rules, 1980 (Ext. 2) regarding fixation of their *inter se* seniority and for regularisation of their services. A copy of the Gradation List of regular workmen (Ext. 3) is also filed showing regularisation of workmen engaged temporarily under the first party management. The second party workman has failed to establish or submit as to how the above Gradation List is connected with the claim of his regularisation in service. As it appears from mere perusal of the Gradation List (Ext. 3), the workers found in the Gradation List were all engaged almost prior to the year 1985, whereas they were entered into regular appointment in the year 1992 and in certain cases in the year 1994-1995. No claim or evidence has been led that any workman shown in the list was engaged temporarily or as a Daily Wager subsequent to the engagement of the second party workman. On the other hand, the second party workman has been reinstated by the Award of the Labour Court, Bhubaneswar wherein observation has been made that the workman was a Daily Wager engaged under the management from the year 1992. In view of such observation in the Award and in absence of any paper more particularly letter of appointment, Muster Roll or Wage Register it is hard to believe or give a finding simply on the oral testimony of the workman that he was engaged from the year 1983. Law is well settled that it is the bounden duty of the workman taking such a plea to establish his date of entry into the service either regular or temporary. Having failed to adduce any credible evidence towards the exact year of his entry into the service as a Daily Wager at best he can be presumed to have been working in the organisation from the year 1992. All the workmen as entered in the Gradation List are apparently under the engagement of the first party management much prior to the engagement of the second party workman. It cannot also be over sighted that neither the pleading in the claim statement nor the oral testimony of the workman disclose the names of the employees whose services have been regularised in spite of their date of entry into the temporary job were subsequent to the date of joining of the second party workman. Unless such specific evidence or materials in that regard is brought on record it cannot be said any unfair labour practice was adopted by the first party management while regularising the service of the workman shown in the Gradation List ignoring the claim of the second party workman.

8. The second limb of contention for regularisation of service of the second party workman is that the workman is in service from the year 1983 and though posts are available in the management to regularise his service and workmen engaged subsequent to the engagement of the second party workman have in the meantime been regularised in service, a direction should be given to the first party management to absorb the workman against a regular post. In this regard coming to the principles settled by the Hon'ble Apex Court in the case of Hari Nandan Prasad and another Vrs. Employer I/R to management of F.C.I. and another, reported in A.I.R. 2014 S.C. 1848, I feel it appropriate to quote the following observation made by the Hon'ble Apex Court in Para. 34 of the judgment :—

"34. On harmonious reading of the two judgments discussed in detail above, we are of the opinion that when there are posts available, in the absence of any unfair labour practice the

Labour Court would not give direction for regularisation only because a worker has continued as Daily Wage Worker / *ad hoc* / temporary worker for number of years. Further, if there are no posts available, such a direction for regularisation would be impermissible. In the aforesaid circumstances giving of direction to regularise such a person, only on the basis of number of years put in by such a worker as Daily Wager, etc. may amount to back-door entry into the service which is an anathema to Art. 14 of the Constitution. Further, such a direction would not be given when the concerned worker does not meet the eligibility requirement of the post in question as per the Recruitment Rules. However, wherever it is found that similarly situated workmen are regularised by the employer itself under some scheme or otherwise and the workmen in question who have approached Industrial/Labour Court are at par with them, direction of regularisation in such cases may be legally justified, otherwise, non-regularisation of the left over workers itself would amount to invidious discrimination qua them in such cases and would be violative of Art. 14 of the Constitution. Thus, the Industrial Adjudicator would be achieving the equality by upholding Art. 14, rather than violating this constitutional provision."

Keeping the aforesaid observation of the Hon'ble Apex Court in view if the pleadings and evidence of the workman is taken into consideration it is found that the workman having failed to establish any unfair labour practice adopted by the first party management is not regularising him in service the Tribunal has no scope for giving a direction in that regard even it is accepted for argument sake that regular posts are available in the first party management to absorb the second party workman. On the other hand, it is emerging from the oral testimony as well as documents relied upon by the first party management that due to financial stringency the management adopted a scheme on the advice of the Tata Consultancy Services to reduce its regular staff strength and introduced Voluntary Retirement Scheme as well as initiated step to disengage the casual employees. There is no evidence to show that permanent post suitable to the second party workman for his absorption is available. In the above situation a direction for his regularisation is impermissible as set out by the Hon'ble Apex Court *supra*.

Further, in the case of State of M.P. and others *Vrs.* Lalit Kumar Verma, reported in 2007 (112) F.L.R. 345, it has been set out by the Hon'ble Apex Court that working on daily wages, however a long period, cannot alone make a workman entitled to the status of permanent employee.

In the case of Union of India *Vrs.* Uma Maheswari and others, reported in 2000 (84) F.L.R. 732 it has been set out by the Hon'ble Apex Court as follows :—

"In the absence of any scheme for regularisation and in the absence of any regular work being available for the posts of which the respondents claim regularisation we do not see how the Tribunal could have granted any order directing regularisation of the services of the respondents. It is true that the respondents have worked for a number of days in a year and for some years, but this was prior to the introduction of the new policy in 1993. The Tribunal was, therefore, not right in directing the appellant to reinstate the respondents whose services had been discontinued or for directing regularisation of their services."

In the case between Gangadhar Pillai *Vrs.* Siemens Ltd., reported in (2007) 1 S.C.C. 533, the Hon'ble Apex Court have observed as follows :—

"Further, it is not the law that on completion of 240 days of continuous service in a year, the employee concerned becomes entitled to for regularisation of his services and/or permanent status. The concept of 240 days in a year was introduced so as to fasten statutory liabilities upon the employer to pay compensation to be computed in the manner specified in

Section 25-F of the Industrial Disputes Act, 1947 before he is retrenched from service and not for any other purpose. In the event a violation of the said provision takes place, termination of services of the employee may be found to be illegal, but only on that account, his services cannot be directed to be regularised. Direction to reinstate the workman would mean that he gets back the same status."

In *State of Karnataka Vrs. Umadevi*, reported in (2006) II L.L.J. 722 S.C. it is well settled that mere long continuance whether under interim orders passed by Courts, Tribunal or otherwise does not confer any right on temporary employees to claim regularisation. It has also been clarified that because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by the relevant Rules.

In view of the settled principles as discussed *supra*, it can be safely held that in the given facts and circumstances as emerging from the pleadings and evidence of the parties, this Tribunal has no scope to pass any order directing the management to regularise the service of the second party workman.

9. *Issue No. (ii)*—As it appears from the claim statement of the second party workman, he has sought for regularisation of his service only and in view of the finding arrived at on *issue No. (i)* the relief claimed cannot be granted by this Tribunal in his favour.

10. In the result, the reference is answered in the following manner :—

The action of the management by not regularising the services of the second party workman from the date of regularisation of services of his juniors, in the facts and circumstances narrated above, is neither illegal nor unjustified and consequently the workman is not entitled to any benefit in the present proceeding.

Dictated and corrected by me.

B. C. RATH  
22-11-2014  
Presiding Officer  
Industrial Tribunal  
Bhubaneswar

B. C. RATH  
22-11-2014  
Presiding Officer  
Industrial Tribunal  
Bhubaneswar

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By order of the Governor  
M. NAYAK  
Under-Secretary to Government